TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 379.

ROYAL INGRAHAM, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED MARCH 19, 1892.

(14,998.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 20, 1894.

1 *Indictment.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the District of Rhode Island.

THE UNITED STATES
vs.
ROYAL INGRAHAM. } No. 2342.

At a circuit court of the United States of America for the district of Rhode Island begun and holden at Providence, within and for said district, on the 15th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

The grand jurors of the United States of America within and for the district aforesaid upon their oaths present—

That Royal Ingraham, of Scituate, in said district of Rhode Island, on, to wit, the 11th day of December, in the year of our Lord one thousand eight hundred and ninety, at said Scituate, within said district of Rhode Island, did knowingly, willfully, and unlawfully make and present and cause to be made and presented for payment and approval to the Third Auditor of the Treasury Department of the United States of America a certain claim against the Government of the United States, to wit, a claim for payment and reimbursement to him, said Royal Ingraham, of certain alleged expenses of the last sickness and burial of Freelove Ingraham, late of said Scituate, deceased, the mother of him, said Royal Ingraham, who in her lifetime had been a pensioner of the United States of America,

2 under pension certificate No. 276,573, issued to said Freelove Ingraham, as the mother of David Ingraham, deceased, and who prior to said 11th day of December had died leaving no widow or minor child surviving her, which said claim was false, fraudulent, and fictitious in this, to wit, in that it was alleged in said claim by him, said Royal Ingraham, among other things, that the last sickness of said Freelove Ingraham continued uninterruptedly from July 21st, 1889, to the date of her death, on the 19th day of September, A. D. 1890; that the said Royal Ingraham had actually paid to one Perry Ingraham and one Mary Ingraham for board, nursing, and medicines furnished to said Freelove Ingraham the sum of three hundred and eighteen dollars, and that he, the said Royal Ingraham, had actually paid to one Zylphia Ingraham for services as nurse to the said Freelove Ingraham the sum of one hundred and forty-eight dollars and fifty-seven cents, whereas in truth and in fact the last sickness of said Freelove Ingraham was of only a few days' duration, and he, the said Royal Ingraham, had not at the time when he made said claim paid to said Perry Ingraham and Mary Ingraham the sum of three hundred and eighteen dollars or any sum for board, nursing, and medicine furnished said Freelove Ingraham, and had not paid to said Zylphia Ingraham the sum of one hundred and forty-eight dollars and fifty-seven cents nor any

sum for services as nurse to said Freelove Ingraham, all of which he, the said Royal Ingraham, well knew, he, the said Royal Ingraham, then and there well knowing said claim to be false,
3 fraudulent, and fictitious, said Third Auditor being then and there authorized to approve and allow said claim, against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid upon their oaths aforesaid do further present—

That said Royal Ingraham, on, to wit, the 11th day of December, in the year of our Lord one thousand eight hundred and ninety, at said Scituate, within said district of Rhode Island, for the purpose of obtaining and aiding to obtain the payment and approval of a certain claim against the Government of the United States, to wit, the claim of him, the said Royal Ingraham, for payment and reimbursement of certain alleged expenses of the last sickness and burial of Freelove Ingraham, late of said Scituate, deceased, the mother of him, said Royal Ingraham, who in her lifetime had been a pensioner of the United States of America under pension certificate No. 276,573, issued to said Freelove Ingraham, as the mother of David Ingraham, deceased, and who prior to said 11th day of December had died leaving no widow or minor child surviving her, did knowingly, willfully, and unlawfully use and cause to be used a certain false affidavit, to wit, the affidavit of one Perry Ingraham and one Mary E. Ingraham, both of Cranston, in said State of Rhode Island, subscribed and sworn to on the 9th day of December, A. D. 1890, before Daniel H. Remington, a justice of the peace, he, the said Royal Ingraham, then and there well knowing the said affidavit to contain a fraudulent and fictitious statement, to wit, the statement that on the 1st day of November, 1890,
4 they, said Perry Ingraham and Mary E. Ingraham, did receive from said Royal Ingraham the sum of three hundred and eighteen dollars in payment of an account therein stated for board, nursing, and medicine furnished to the said Freelove Ingraham in her lifetime, whereas in truth and in fact they, said Perry Ingraham and Mary E. Ingraham, or either of them did not, on said 1st day of November or at any other time prior to the making of said affidavit, receive from said Royal Ingraham the sum of three hundred and eighteen dollars or any sum in payment of an account for board, nursing, or medicine furnished to said Freelove Ingraham or for any services rendered to said Freelove Ingraham, all of which he, the said Royal Ingraham, then and there well knew, against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

A true bill.

CHRISTOPHER DUCKWORTH,
Foreman of Grand Jury.

Preferred by—

RATHBONE GARDNER,
U. S. Attorney for the District of Rhode Island.

5 *Deceased Pensioner. Cert. No.* 276,573.

Expense account.

On the 1st day of November, 1890, I, Perry Ingraham, and I, Mary E. Ingraham, his wife, residing at Cranston, R. I., did receive from Royal Ingraham, a resident of Rockland, R. I., the sum of three hundred and eighteen dollars ($318.00) in payment of the following account, which is in every particular just and true and which we verily believe embraces only such items of service and expenditure as were made necessary by the last sickness and death of Freelove Ingraham, late United States pensioner, residing at Rockland, R. I.:

To board of Freelove Ingraham from July 21, 1889, to February 23, 1890, 31 weeks, at $5.00	$155 00
To nursing 31 weeks, at $5.00	155 00
To medicines furnished	8 00
Total	$318 00

PERRY INGRAHAM.
MARY E. INGRAHAM.

STATE OF RHODE ISLAND, *County of Providence,* } *ss:*

Sworn and subscribed to before me this 9th day of December, 1890, and I hereby certify that I have no interest in the matter of this affidavit.

[L. S.] DANUEL H. REMINGTON,
Justice of the Peace.

6 [Endorsed:] Third Auditor's office. Received Dec. 24, 1890. J. H. C. Pension division. Third Auditor's office. Dec. 24, 1890. Mail-room.

7 Form 91*b*.

OFFICE OF THIRD AUDITOR OF THE TREASURY.

A. R. *Application for Reimbursement.* A. R.

I, Royal Ingraham, do swear that Freelove Ingraham, late resident of Rockland, county of Providence, State of Rhode Island, died on the 19th day of September, 1890; that the decedent drew a pension at the agency at Boston, Mass., under certificate No. 276,573. She did not draw any portion of her pension as the mother of David Ingraham, formerly a soldier (or sailor) in the service of the United States; that said decedent left surviving neither widow nor minor child, recognized as such by the laws of the said State of which she was a resident, and did not leave sufficient assets to meet the expenses of decedent's last sickness and burial, and that said expenses are correctly enumerated in the following statement, the names of

the persons who rendered service or furnished necessaries being given, with items and amounts:

Names.	Nature of expenses.	Paid or unpaid.	Amount.
Perry & Mary E. Ingraham.	To board, nursing, & medicines furnished.	.....	$318 00
Zylphia Ingraham...	To services as nurse.....	.....	148 57
W. H. Bowen, M. D.	Medical attendance	.....	11 00
W. H. Luther.....	Undertaker's bill.....	.....	34 50
Royal Ingraham	To board, nurishment, & medicines furnished from Feb. 24, 1890, to Sept. 19, 1890, 29 & ½ weeks, at $5.	14 00 148 57	
			162 57
			$674 64

8 I further swear that the above is a complete list of all the expenses of last sickness and burial; that they were proper and necessary; that they were all actually paid by me except those marked "unpaid," for which no reimbursement is claimed, the parties in interest having signed a formal release, and that I have received on account of the expenses paid by me no pecuniary return or recompense whatever except a piece of land situated in the town of Rockland, R. I., given me by my mother, Freelove Ingraham, at her death, which said land is valued at $350.00. I therefore make application for reimbursement of such expenses, claiming the sum of $674.64.

The total value of all property of whatever kind, personal and real, left by the decedent did not exceed $350, and consisted of a lot of land which is valued at $350, which said land was bequeathed to me by my mother, Freelove Ingraham, United States pensioner, as aforesaid. Said lot of land is still in my possession, and only the sum of — dollars of said assets has been or can be available for reimbursement of the above-named expenses.

The decedent's last sickness continued uninterruptedly from July 21st, 1889, to date of death, and its nature and degree were as follows: Diarrhea and general debility therefrom, she being a chronic invalid from date above mentioned to date of her death. The pension certificate is herewith returned (or, if not, state why not). My residence is in the town of Rockland, county of Providence, State of Rhode Island, and my post-office address is, Care of lock-box 681, Providence, R. I.

(Applicant's signature) ROYAL INGRAHAM.

9 We, Frank H. Fuller and Richard E. Barden, neighbors of Freelove Ingraham, the above-named deceased pensioner, having read the foregoing statement of Royal Ingraham, the claimant herein, declare that we know the same to be true.

(Neighbors' signatures) RICHARD E. BARDEN.
FRANK H. FULLER.

Sworn to and subscribed before me this 11th day of December, 1890, at Scituate, R. I., and I certify that the affiants are reputable and entitled to credit and knew the contents of the above before swearing, and that I have no interest, direct or indirect, in this claim.

(Signature) DANIEL H. REMINGTON,
[SEAL.] (Official character.) *Justice of the Peace.*

Pensioner's certificate must be forwarded with claim.

Claimant's Oath of Allegiance.

Revised Statutes of the United States.

SECTION 3478. Any person prosecuting claims, either as attorney or on his own account, before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and support the Constitution of the United States as required of persons in the civil service.

I, Royal Ingraham, a citizen of the United States, do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance,
10 and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and, further, that I will well and faithfully perform all the duties which may be required of me ny law, so help me God.

ROYAL INGRAHAM.

STATE OF RHODE ISLAND, } *ss:*
County of Providence, }

Subscribed and sworn to before me this 11th day of December, 1890.

DANIEL H. REMINGTON, *J. P.* [SEAL.]

N. B.—This application may be executed before any official qualified to administer oaths. If he has a seal it must be affixed; if not a certificate of a court of record as to his official character must accompany the claim. It is not sufficient that such a certificate is filed in the Pension Office.

[Endorsed:] Claim for reimbursement. Certificate No. 276,573. Pensioner, Freelove Ingraham. Soldier, David Ingraham. Agency, Boston. Roll, mother's. Claimant, Royal Ingraham. Amount allowed, $—. Third Auditor's office. Dec. 24, 1890. Mail-room. Third Auditor's office. Received Dec. 24, 1890. Pension division. J. H. C.

11 And at said June term, 1891, to wit, on the 30th day of June, A. D. 1891, the d-fendant was arraigned before Carpenter, J., upon his said indictment and plead not guilty thereto, and

for trial put himself before a jury who were well and truly sworn to try the issue between the United States and the said defendant, who, after hearing all matters and things concerning the same, returned their verdict therein upon oath, and say that the jury find that the defendant is guilty in manner and form as laid in the indictment against him; whereupon, on the same day, the following motion was filed:

Motion in Arrest of Judgment.

Filed July 1st, 1891.

The defendant in the above-entitled cause moves that judgment therein be arrested for the following reasons:

First. Because the court erred in denying the motion of said defendant to quash said indictment.

Second. Because the first count in said indictment is uncertain and charges no offence in this, that it does not set forth that the Third Auditor of the Treasury Department of the United States of America was a person and officer in the civil, military, or naval service of the United States.

Third. Because the second count in said indictment is uncertain and charges no offence in this, that it does not set forth that the claim against the Government of the United States had been or was to be presented to a person or officer in the civil, military, or naval service of the United States; that it does not set forth that
12 said Daniel H. Remington, a justice of the peace, was authorized to administer oaths, and does not set forth in what jurisdiction said Daniel H. Remington was justice of the peace, and that said affidavit was sworn to in his jurisdiction.

ROYAL INGRAHAM.

And said cause was continued to the 3rd day of October, A. D. 1891, when it was called for hearing before Carpenter, J., upon said motion in arrest of judgment, heard, and decision reserved; and on the 3rd day of February, 1892, the following rescript and opinion were filed:

Rescript.

Filed February 3, 1892.

Let the motion in arrest of judgment be denied and dismissed.

G. M. CARPENTER, *J.*

Opinion.

Filed February 4, 1892.

CARPENTER, *J.*:

This is a motion in arrest of judgment after verdict on an indictment under section 5438 of the Revised Statutes, which is as follows:

"SECTION 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military or naval service of the

United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing
13 such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry * * * shall be imprisoned &c."

The language of the indictment, so far as it is pertinent to the question raised by this motion, is as follows:

In the first count, "That Royal Ingraham * * * did knowingly, wilfully, and unlawfully make and present and cause to be made and presented for payment and approval to the Third Auditor of the Treasury Department of the United States of America a certain claim against the Government of the United States," and in the second count, "That said Royal Ingraham, * * * for the purpose of obtaining and aiding to obtain the payment and approval of a certain claim against the Government of the United States, to wit, &c., * * * did knowingly, wilfully, and unlawfully use and cause to be used a certain false affidavit, to wit, the affidavit of one Perry Ingraham and one Mary E. Ingraham, * * * subscribed and sworn to on the 9th day of December, in the year of our Lord one thousand eight hundred and ninety, before Daniel H. Remington, a justice of the peace, he, the said Royal Ingraham, then and there well knowing the said affidavit to contain a fraudulent and fictitious statement, to wit," &c.

The motion in arrest of judgment is based upon the following grounds:

14 1. That the first count is uncertain and charges no offence, in that it does not set forth that the Third Auditor of the Treasury Department of the United States of America was a person and officer in the civil, military, or naval service of the United States.

2. That the second count is uncertain and charges no offence, in that it does not set forth that the claim against the Government of the United States had been or was to be presented to a person or officer in the civil, military, or naval service of the United States, and also in that it does not set forth that said Daniel H. Remington, a justice of the peace, was authorized to administer oaths, and in what jurisdiction said Remington was justice of the peace, and that said affidavit was sworn to in his jurisdiction.

I am of opinion that in both the above particulars the offence is sufficiently stated under the statute.

As to the first objection, it is to be observed that the purpose of the indictment is to make it clear beyond a peradventure that the claim in question was presented to a person such as is described in the statute. The grand jury, the court, and the prisoner, being conclusively presumed to know the law, are therefore conclusively presumed to know that the Third Auditor is a person and officer in the civil service. The language therefore makes certain the meaning of the grand jury and sufficiently informs the prisoner of

the charge against him. The person to whom the claim was presented is described in terms which show him to be one of the
15 general class of persons intended by the statute, and it is not necessary especially to state that he belongs to that class. It can be no more necessary to allege that the auditor is a person in the civil service than it would be to allege that Royal Ingraham is a person.

As to the second objection, I observe that the substance of the crime consists in the presentation of a "false * * * affidavit * * * knowing the same to contain any fraudulent or fictitious statement." Clearly the affidavit so alleged to have been presented must be so fully described that the prisoner may be able to identify the particular affidavit intended by the grand jury, and it is not necessary that it be described further. In this indictment it is described by date of jurat and name of the person taking the same, and also by a recital of the alleged false statement contained in the affidavit. The allegation that Remington was authorized to administer the oath could not add to this certainty of description. Still further, it seems to me to be clear that it is not necessary that Remington should have been authorized to administer oaths in order that the offence here charged shall be complete. The word affidavit relates to the form of the false paper which is presented and not to its legal character. If Remington were not a justice of the peace, or if he did not administer the oath and his signature to the jurat were forged, I think the paper would still be a "false affidavit" within the meaning of the statute. The motion must therefore be denied and dismissed.

16 And on the 13th day of February, 1892, the said defendant was called for sentence before Carpenter, J., and sentenced to one year's imprisonment in the Rhode Island State's prison to hard labor and to pay the costs of prosecution; whereupon, on the same day, the following petition was filed and allowed:

Petition for a Writ of Error.

Filed Feb. 13th, 1892.

Royal Ingraham, of Scituate, in the county of Providence and State of Rhode Island, respectfully represents—

That at the June term, 1891, of said court, he was tried upon the above-entitled indictment and found guilty; that during said trial he duly excepted to certain rulings of the court and duly filed his bill of exceptions; that he also moved in arrest of judgment, which motion was duly heard, and at the November term, A. D. 1891, of said court, denied.

And your petitioner represents that errors in matter of law were committed by the court in its rulings at said trial and upon the hearing of the motion in arrest of judgment.

Wherefore he prays that a writ of error to the Supreme Court of the United States may be allowed, and that said indictment may be

removed to said Supreme Court for the correction of said errors, and that said judgment on said indictment may be reversed.

ROYAL INGRAHAM,
By his attorneys, CHARLES H. PAGE &
FRANKLIN P. OWEN.

17 *Assignment of Errors.*

Filed February 13th, 1892.

Supreme Court.

The defendant in the court below and the plaintiff in error in this court makes the following assignment of errors:

1. The court erred in overruling and denying the defendant's motion to quash, because two offences, separate and distinct, are charged in said indictment.

2. The court erred in refusing to charge the jury that there was no evidence that the sum of $318.00 was not paid to Mary E. Ingraham.

3. The court erred in refusing to charge the jury that there was no evidence that an affidavit of Perry Ingraham and Mary E. Ingraham was filed in the Third Auditor's office.

4. The court erred in refusing to charge the jury that they must find defendant intended to defraud the Government.

5. The court erred in dismissing and denying defendant's motion in arrest of judgment, because the first count does not set forth in said indictment that the Third Auditor of the Treasury of the United States of America was a person and officer in the civil, military, or naval service of the United States.

6. The court erred in dismissing and denying defendant's motion in arrest of judgment, because the second count of said in-
18 dictment does not set forth that the claim against the Government of the United States had been or was to be presented to a person or officer in the civil, military, or naval service of the United States, and also that it does not set forth that Daniel H. Remington, a justice of the peace, was authorized to administer oaths and in what jurisdiction said Remington was justice of the peace, and that said affidavit was sworn to in said jurisdiction.

Wherefore the plaintiff in error prays that the judgment of the circuit court may be reversed.

ROYAL INGRAHAM,
By his attorneys, PAGE & OWEN.

Bill of Exceptions.

Filed February 13th, 1892.

The above-entitled cause came on for trial at the June term, 1891, before Judge Carpenter and a jury.

The prisoner moved that the said indictment be quashed, because it sets forth two distinct offences, and the prisoner is charged with

two distinct offences in the indictment, which motion is overruled and denied and the prisoner duly excepted.

There was testimony tending to show that the prisoner presented to the Third Auditor of the Treasury of the United States and used and caused to be used before the said auditor in the prosecu-
19 tion of a claim against the Government of the United States a certain paper in the form of and purporting to be an affidavit signed by Perry Ingraham and Mary E. Ingraham and purporting to be sworn to before Daniel H. Remington as a justice of the peace and certified by him as having been so sworn; but there was no further testimony tending to show that the said Remington at the time and place said paper was sworn to was duly commissioned and qualified as a justice of the peace and was as such authorized then and there to administer oaths.

At the conclusion of the testimony the prisoner asked the court to charge the jury as follows:

That there is no evidence in this case that the Third Auditor of the Treasury of the United States is a person or officer in the civil, military, or naval service of the United States and therefore the jury must find the defendant not guilty on the first count.

That there is no evidence in this case that the sum of $318.00 was not paid to Mary E. Ingraham and therefore the jury must find the defendant not guilty on the second count of this indictment.

That there is no evidence in this case that an affidavit of Perry Ingraham and Mary E. Ingraham was ever filed in the Third Auditor's office and therefore the jury must find the defendant not guilty on the second count of this indictment.

20 That the jury must find that the defendant intended to defraud the Government in order to find the defendant guilty. If he acted in good faith, under the advice of an authorized attorney, then he is not guilty.

Which requests the court refused and to which refusal the prisoner then and there duly excepted.

And the prisoner now presents this bill of his exceptions and prays that the same may be found true and allowed and signed accordingly.

Presented in due time and signed and allowed as of the 30th day of June, in the year eighteen hundred and ninety-one.

G. M. CAPENTER, *J.*

21 *Bond on Appeal.*

Filed February 13, 1892.

Know all men by these presents that we, Royal Ingraham as principal and Anson Ingraham as surety, are holden and firmly bound unto the United States of America in the full sum of two hundred and fifty dollars; to which payment, well and truly to be made, we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of February, A. D. 1892.

Whereas at a circuit court of the United States, holden at Providence, within and for the district of Rhode Island, on the 13th day of February, A. D. 1892, in an indictment depending in said court between the United States and the said Royal Ingraham, a judgment of guilty was rendered against the said defendant, Royal Ingraham, and the said Royal Ingraham having obtained leave to remove said suit to the Supreme Court of the United States upon a writ of error, and filed a copy of said writ in the clerk's office of said Court, to remove the judgment in the aforesaid suit, returnable to the next term of said Supreme Court to be held at the city of Washington on the second Monday of October next ensuing:

Now, therefore, the condition of this obligation is such that if the said Royal Ingraham shall prosecute his said writ of error
22 with effect and answer all costs if he fail to make his plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

ROYAL INGRAHAM. [SEAL.]
ANSON INGRAHAM. [SEAL.]

23 The President of the United States of America to the marshal of the district of Rhode Island or his deputy, Greeting:

You are required to make known to the United States of America that in a certain cause in the circuit court of the United States within and for the said district, wherein the said United States prosecuted an indictment against Royal Ingraham, wherein judgment was rendered against the said Ingraham on the 13th day of February, 1892, the said Ingraham has this day sued out a writ of error unto the Supreme Court of the United States, next to be holden at Washington, in the District of Columbia, on the 2nd Monday of October next; and the United States is therefore cited and admonished to appear at said Supreme Court to show cause, if any there be, why the said judgment rendered against Royal Ingraham in said writ of error mentioned should not be corrected and why speedy justice should not be rendered in that behalf.

Witness the Honorable George Moulton Carpenter, United States district judge for the district of Rhode Island, the 13th day of February, A. D. 1892.

G. M. CARPENTER, *J.*

DISTRICT OF RHODE ISLAND:

PROVIDENCE, *March* 12, 1892.

I have this day made service of the foregoing citation by placing a true and attested copy of the same into the hands and possession of Rathbone Gardner, the attorney of the United States for
24 the district of Rhode Island.

Fees.

Service	2 00
Copy	1 00
Travel	06
	$3 06

JOHN E. KENDRICK,
Marshal of the United States for the District of Rhode Island.

25 UNITED STATES OF AMERICA, }
District of Rhode Island. }

Seal of Circuit Court, Rhode Island.

The President of the United States of America to the judges of the circuit court of the United States for the district of Rhode Island, Greeting:

Because that in the record and process and also in the recording of judgment in a suit before you or some one of you between the United States and Royal Ingraham a manifest error has intervened to the great damage of the said defendant, as has in his complaint been stated, and it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf—

You are hereby commanded that if judgment thereof be given, then, under your seal, you, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Supreme Court of the United States on the second Monday of October next, at Washington, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Melville Weston Fuller, our Chief Justice, at Providence, in said district, this thirteenth day of February, A. D. 1892.

HENRY PITMAN, *Clerk.*

[Endorsed:] United States *v.* Royal Ingraham. Writ of error.

26 *Return on Writ of Error.*

Circuit Court of the United States, District of Rhode Island.

And here the judges of the circuit court of the United States in and for the district of Rhode Island make return of this writ by annexing hereto and sending herewith, under the seal of said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States as within commanded.

Seal of Circuit Court, Rhode Island.

In testimony whereof I, Henry Pitman, clerk of said circuit court of the United States in and for the district of Rhode Island, have hereto set my hand and the seal of said court this 18th day of February, A. D. 1892.

HENRY PITMAN, *Clerk.*

Endorsed on cover: Case No. 14,998. Rhode Island C. C. U. S. Term No., 379. Royal Ingraham, plaintiff in error, *vs.* The United States. Filed March 19th, 1892.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Rhode Island.

UNITED STATES
vs.
ROYAL INGRAHAM.

This was an indictment charging the defendant with a violation of Section 5438, of the Revised Statutes of the United States, in form as set forth upon page 1, of the record in said case, and the plaintiff in error, Royal Ingraham, now comes and presents this, as his statement of the law in said case, with reference to the errors therein claimed, as set forth upon page 9 of the record in said case.

First: The plaintiff in error claims that the two counts in said indictment each charge him with separate and distinct offence that it is not two phases of the same offence, nor is either of them such offences as that the lesser might lawfully be said to be included in the greater, neither does it matter that the offences are by the statute subject to the same punishment, neither does it matter that they are included in the same section of the statute, because they are of such a character that the said Royal Ingraham might legally have been separately indicted for, and separately punished for each of said offences.

U. S. vs. *Burns*, 54 Fed. Rep., 351.
State vs. *Haven*, 59 Ver. 399.

Second: It appears by the bill of exceptions allowed by the Justice who presided at the trial of said case that a certain paper was presented to the Third Auditor of the Treasurer of the United States, purporting to be an affidavit signed by Perry Ingraham and Mary E. Ingraham, &c., as appears upon page 10, of the record in said case. The word affidavit as used in the statute and in the indictment is used in its legal and technical sense, and therefore it was the duty of the Government to show by competent testimony

that it was an affidavit, which the Government did not do as appears upon page 10, of the record of said case.

An affidavit is a written declaration upon oath; a statement of facts in writing signed by the affiant and sworn to or confirmed by a declaration before a Notary Public, Magistrate or other AUTHORIZED officer.—"*Century Dictionary.*"

Fifth: Because the second count of said indictment that the paper purporting to be an affidavit sworn to be before Daniel H. Remington, a Justice of the Peace, does not set forth that said paper was sworn to before said Daniel H. Remington, a Justice of the Peace, authorized to administer oaths, and does not set forth in what jurisdiction said Remington was Justice of the Peace, and that said affidavit was sworn to in his said jurisdiction. It being necessary as claimed above to prove that the paper presented, &c., was an affidavit, it follows that it was necessary to aver it in the indictment.

CHARLES H. PAGE,
By his attorneys, FRANKLIN P. OWEN.

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CASE No. 14998.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ROYAL INGRAHAM, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
} No. 379.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BRIEF FOR DEFENDANT IN ERROR.

CASE No. 14 998.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ROYAL INGRAHAM, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 379.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BRIEF FOR DEFENDANT IN ERROR.

Plaintiff in error was tried and convicted June 30, 1891, for the unlawful use in support of a pension claim of a certain false affidavit, and for the unlawful presentation of said claim. The indictment was under § 5438 of the Revised Statutes, which section, so far as important, is set forth in the opinion of Judge Carpenter at pages 6–7 of the record. He was sentenced to the *minimum* imprisonment allowed by said section—one year at hard labor in the Rhode Island State's prison. (See Rev. St., § 5542.)

Part of the technical objections set up in the assignments of error are abandoned by counsel in the brief filed on behalf of the prisoner. Counsel still, however, insist on the following objections:

First: That the indictment contains two offences. This is disposed of by Revised Statutes, § 1024, and *Pointer* v. *United States*, 151 U. S., 396, 400.

Second: That the affidavit aforesaid was not shown to have been sworn to before a duly authorized official; in other words, that the justice of the peace may have been a bogus justice. Counsel fail to point out wherein the presentation of a false affidavit is mitigated by the fact that the signature to the affidavit is bogus as well as the statements therein contained. The statute is not confined to sworn documents. The indictment lies for the use of a "false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition." (Rev. St., § 5438.) The gist of the offense is not the false swearing—in this case the affiant is not the offender—but the attempt to deceive the Commissioner of Pensions. (Carpenter, J., Record, p. 8.) Moreover, that Remington was a justice of the peace, and that the affidavit was sworn to within his jurisdiction, are to be presumed from his official signature and seal in the absence of proof to the contrary. (*Keely* v. *Sanders*, 99 U. S., 441.) "It is not in general necessary to prove the written appointments of public officers. All who are proved to have acted as such are presumed to have been duly appointed to the office until the contrary appears." (1 Greenleaf Ev., § 92.) And the prisoner, having presented the paper as genuine, is

estopped to deny the justice's authority. The principles of estoppel are applicable in criminal proceedings. (Wharton Crim. Ev., § 679.) Furthermore, a State court takes judicial notice of civil officers within its own district. (*Ede* v. *Johnson*, 15 Cal., 53; *Thielmann* v. *Burg*, 73 Ill., 293.) Why should not this apply to Federal courts, and to State officers within the district, who are given Federal authority by statute?

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney-General.